

FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

98 NOV 10 PM 2:58

ALABAMA BINGO, INC., ET AL., }

Plaintiffs }

vs. }

CITY OF BIRMINGHAM, ALABAMA, }

Defendant }

U.S. DISTRICT COURT  
N.D. OF ALABAMA

CIVIL ACTION NO.

98-AR-1580-S

ENTERED

NOV 10 1998

MEMORANDUM OPINION

On September 11, 1998, this court granted the motion of defendant, City of Birmingham, Alabama, to dismiss the above action, but with leave to amend the complaint within fourteen calendar days for the purpose of presenting a complaint which states a claim upon which relief can be granted. On September 23, 1998, plaintiffs, Alabama Bingo, Inc., and Birmingham Bingo, Inc., amended their complaint. On October 13, 1998, defendant filed a motion to dismiss or in the alternative for summary judgment. On October 14, 1998, the court entered a submission order.

If non-movants under Rule 56, F.R.Civ.P., consideration, have the ultimate burden of proof as they do here, they must present some evidence in support of their essential allegations. Plaintiffs have not done so. Instead, plaintiffs have relied on the conclusory allegations of their amended complaint which still does not state a claim upon which relief can be granted, particularly in that plaintiffs do not allege facts which would give them standing to seek a permit to operate a bingo parlor. The unnamed



alleged non-profit organizations that allegedly would operate the bingo games, are necessary and indispensable parties. For these reasons and because the facts set forth in the statement of facts filed by defendant on July 16, 1998, are undisputed, and the court agrees with the arguments contained in defendant's memorandum briefs, defendant's motion for summary judgment and its motion to dismiss will be granted by separate order.

DONE this 10<sup>th</sup> day of November, 1998.



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WILLIAM M. ACKER, JR.  
UNITED STATES DISTRICT JUDGE